

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE PCT NATIONAL STAGE APPLICATION OF

CROWLEY, ET AL.

Confirmation No.: 5169

INTERNATIONAL APPLICATION NO: PCT/GB03/004612

I.A. FILING DATE: 27 OCTOBER 2003

U.S. APPLICATION NO: 10/536,518

35 USC §371 DATE: May 25, 2005

FOR: FUNGICIDES

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this Request.

This Request is being filed with a Notice of Appeal and the appeal fee.

The Review is being requested for the reasons stated on the attached sheets.

Applicants do not believe any additional fees are due with this request. If additional fees are due, please charge the required fees to Deposit Account No. 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

USPTO Customer No. 26748  
Syngenta Crop Protection, Inc.  
Patent and Trademark Dept.  
410 Swing Road  
Greensboro, NC 27409  
(336) 632-7547

/JACQUELINE HALEY/  
Jacqueline Haley  
Attorney for Applicants  
Reg. No. 41,457

Date: June 8, 2007

Claims 9-32 are pending. Applicants note that the claims herein are directed to new uses for known compounds. The compounds are known herbicides and known insecticides. Applicants have discovered that the compounds unexpectedly possess fungicidal properties. In fact, Applicants have discovered that the compounds can obtain up to 60% fungal control and have limited the claims to include such.

The Examiner rejected claims 19-22, 25-28, 30, and 32 under 35 USC 102(b) as being anticipated by Baker (US 4,062,977). Claims 19-22, 25-28, 30 and 32 were rejected under 35 USC 102(b) as being anticipated by Baker (US 4049423).

The present claims provide only for fungicidal methods of using the compounds of formula (1). While the Examiner has noted that the active compounds are disclosed as herbicides in the '977 and '423 patents, Applicants submit that the presently claimed invention is directed to a new use for a known compound. As noted by the Examiner, neither Baker reference discloses fungicidal activity of the compounds; rather, the reference only discloses insecticidal or herbicidal activity. As the method for controlling phytopathogenic fungi is disclosed nowhere in these references, Applicants respectfully submit that the rejection under 35 USC 102(b) be withdrawn.

The Examiner indicated that the claimed method would have been inherent in the methods taught by both Baker references. Applicants respectfully disagree. The claims herein are limited such that at least 60% fungal control is obtained. Applicants respectfully submit that there is nothing in the Baker references indicating **any** fungal control, especially a 60% control against fungi. There is nothing in the reference to indicate that fungal control could be achieved, and nothing to direct the ordinary artisan to measure fungal control in order to achieve 60% control.

The Examiner rejected claims 20, 29, 31 under 35 USC 103(a) as being unpatentable over Baker '423. The Examiner relies on the disclosure of Baker to establish a prima facie case of obviousness for the compounds applied in previously-pending claims 11-13 and 17. However, as noted above, the Baker reference fails to teach or suggest the claimed *method of use* of the compounds. As the claimed methods are new uses for known compounds, even if the Examiner had established a prima facie case with respect to the compounds previously claimed, which Applicants do not comment on one way or the other, Applicants respectfully submit that the Examiner has not established a prima facie case for obviousness of the method of use. Accordingly, Applicants respectfully request withdrawal of this rejection and allowance of all claims.